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Arizona Corporation Commission

BEFORE THE ARIZONA CORPORATION COMMISSION

2000 DEC -1 A 11: 51

CARL J. KUNASEK  
CHAIRMAN  
JIM IRVIN  
COMMISSIONER  
WILLIAM A. MUNDELL  
COMMISSIONER

DEC 01 2000

AZ CORP COMMISSION  
DOCUMENT CONTROL

DOCKETED BY

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IN THE MATTER OF THE COMPLIANT )  
OF DIVERSIFIED WATER UTILITIES, )  
INC. AGAINST JOHNSON UTILITIES )  
COMPANY AND H2O, INC. FOR )  
POTENTIAL INTERFERENCE WITH THE )  
OPERATIONS OF AN EXISTING LINE, )  
PLANT OR SYSTEM. )

DOCKET NOS. W-02234-A-00-0775  
WS-02987A-00-0775  
W-02859A-00-0775

APPLICATION FOR AN ORDER  
WITHOUT NOTICE TO PRESERVE  
STATUS QUO

Diversified Water Utilities, Inc. ("Diversified") hereby respectfully requests that the Arizona Corporation Commission ("Commission") issue an order prohibiting Johnson Utilities, L.L.C., dba Johnson Utilities Company ("Johnson Utilities"), and its officers, directors, employees and agents from undertaking any and all of the following activities:

1. Interfering with Diversified's application for financing with the Water Infrastructure Financing Authority ("WIFA");
2. Extending its facilities or service into the area encompassed by Diversified's Certificate of Convenience and Necessity including, without limitation (i) entering into a Well Purchase Agreement relating to a wellsite more fully described on Exhibit A, attached hereto which wellsite is located within the certificated area of Diversified, is several miles away from the area currently certificated to or served by Johnson Utilities and had previously been committed to Diversified and (ii) entering into a Service Agreement to provide, or otherwise providing water service to properties within Diversified's Certificate of Convenience and Necessity. See, Service Agreement, attached hereto as Exhibit B and incorporated herein by this reference;

LAW OFFICES

MARTINEZ & CURTIS, P.C.  
2712 NORTH 7TH STREET  
PHOENIX, AZ 85006-1090  
(602) 248-0372

1                   3.       Contacting landowners and/or prospective developers of lands  
2 within Diversified's certificated area and offering water service and/or encouraging said  
3 landowners or prospective developers from seeking deletions from Diversified's certificated  
4 area, or otherwise filing complaints regarding Diversified's service.

5                   This request is made pursuant to A.R.S. § 40-202 (authorizing the Arizona  
6 Corporation Commission to supervise and regulate every public service corporation in the state  
7 and do all things, whether specifically designated in Title 40 or in addition thereto, necessary and  
8 convenient in the exercise of such power and jurisdiction); § 40-203 (authorizing the  
9 Commission to prescribe the contracts and practices of public service corporations if they are  
10 unjust, discriminatory or preferential, illegal or insufficient); § 40-246 (permitting persons to file  
11 complaints setting forth any act or thing done or omitted to be done by any public service  
12 corporation in violation, or claimed to be in violation of any provision of law or any order or rule  
13 of the Commission); § 40-281(B) (authorizing the Commission to order and prescribe terms and  
14 conditions for the location of lines, plants or systems affected as it deems just and reasonable);  
15 40-281(A) (requiring a public service corporation to first obtain from the Commission a  
16 certificate of public convenience and necessity before beginning construction of plant service or  
17 system or any extension thereof) and A.A.C. R14-3-101A incorporating the Rules of Civil  
18 Procedure for Superior Court of Arizona as governing the proceedings before the Arizona  
19 Corporation Commission, including Rule 65(D) (governing temporary restraining orders)  
20 thereof.  
21

22                   By this Application, Diversified requests the Commission preserve the status quo  
23 and preclude Johnson Utilities from irreparably damaging Diversified until an order to show  
24 cause hearing can be held for the purpose of continuing the prohibition on the outrageous and  
25 patently illegal conduct of Johnson Utilities pending a full evidentiary hearing on Diversified's  
26 First Amended Complaint.

1 I. JOHNSON UTILITIES IS UNDERTAKING ILLEGAL ACTIVITIES WHICH  
2 WILL IRREPARABLY INJURE DIVERSIFIED.

3 As supported by the Affidavit of Scott Gray, attached hereto as Exhibit C and  
4 incorporated herein by reference, immediately after Diversified (i) intervened in and opposed  
5 Johnson Utilities' Application to significantly expand its certificated area throughout Pinal  
6 County; and (ii) applied to expand its own certificate to encompass areas contiguous to its  
7 current certificated area, Johnson Utilities embarked on an intentional and concerted effort to  
8 undermine the public health, safety and welfare by directly interfering with the operations and  
9 business expectancies of Diversified in direct contravention of Arizona law. These efforts  
10 include, but are not necessarily limited to:

11 1. Contacting WIFA staff, outside of any public comment forum  
12 provided by law, and providing incomplete, false and/or misleading information for the purpose  
13 of causing WIFA to suspend Diversified's WIFA application. The WIFA loan will be used to  
14 fund a new well and additional storage critical to Diversified's current needs;

15 2. Contacting the developer/well owner (Russ Brandt) who had  
16 committed to provide Diversified an existing well and wellsite and offering to purchase said well  
17 and wellsite even though the well is located a mile within Diversified's existing certificated area  
18 and is located approximately four miles from Johnson Utilities' current certificated area and even  
19 further from any existing service provided by Johnson Utilities;

20 3. Negotiating with landowners and prospective developers within  
21 Diversified's existing certificated area and offering to provide water service thereto for the  
22 purpose of inciting the landowners/developers (i) applying pressure on Russ Brandt not to sell  
23 the well and wellsite to Diversified; (ii) to seek to have their lands removed from Diversified's  
24 certificated area ; and (iii) to file complaints against Diversified;  
25  
26

1                                   4.       Offering to contractually commit to provide water service to  
2 approximately 900 acres of land located within Diversified's certificated area. See, Service  
3 Agreement attached as Exhibit B.

4                                   **A.       Johnson Utilities Is Intentionally Trampling Upon Diversified's**  
5                                   **Property Rights.**

6                                   Diversified has a contract with the State whereby it is granted monopoly  
7 protection against other public service corporations, such as Johnson Utilities, in return for its  
8 commitment to provide reliable water service to landowners within that certificated area.  
9 *Application of TRICO Electric Cooperative, Inc.*, 92 Ariz. 373, 380-381, 377 P.2d 309, 315  
10 (1962) ("By the issuance of a certificate of convenience and necessity to a public service  
11 corporation the State in effect contracts that if the certificate holder will make adequate  
12 investment and render competent and adequate service, he may have the privilege of a monopoly  
13 as against any other private utility. [The] right to maintain its distribution lines in the area of its  
14 certificate and to make extensions therefrom to customers resulting from development of the area  
15 served by it, is a vested property right, protected by Article 2, Section 17, of the Arizona  
16 Constitution, A.R.S.") The certificate constitutes a property right that may not be taken away  
17 from Diversified so long as it is ready, willing and able to provide water service to the public in  
18 accordance with the Commission's rules and regulations. *James P. Paul Water Company v.*  
19 *Arizona Corporation Commission*, 137 Ariz. 426, 429, 671 P.2d 404, 407 (1983) ("Once  
20 granted, the certificate confers upon its holder an exclusive right to provide the relevant service  
21 for as long as the grantee can provide adequate service at a reasonable rate. If a certificate...  
22 means anything, it means that its holder has the right to an opportunity to adequately provide the  
23 service it was certificated to provide.") Johnson Utilities, a like public service corporation, is  
24 absolutely precluded from offering or providing service within the certificated area of  
25 Diversified. A.R.S., § 40-281.B; *Tucson Gas, Electric L. & P. Co. v. TRICO Electric Coop.*,  
26

1 *Inc.*, 2 Ariz. App. 105, 108, 406 P.2d 740, 743 (1965) (enjoining *TG&E's* extension of a line into  
2 an area only "presumably" certificated to *TRICO*). Johnson Utilities is trampling Diversified's  
3 property rights by dealing with property owners within Diversified's certificated area,  
4 encouraging decertification of properties within Diversified's certificated area and acquisition of  
5 a well and wellsite previously committed to Diversified.

6 **B. Johnson Utilities Is Interfering With Diversified's Contractual**  
7 **Relationships And Business Expectancies.**

8 Diversified currently has one well and 25,000 gallons of storage located in the  
9 Southern portion of its certificated area. This well and storage serves approximately 160  
10 customers. Growth is occurring both in the South and North of Diversified's certificated area.  
11 Diversified has extended 8 inch and 12 inch lines to accommodate the growth and is actively  
12 working to increase its water production and storage capacity for system reliability. In 1999  
13 water service was sought to phase one of the Rancho Vista subdivision located within  
14 Diversified's certificated area. This was the first platted subdivision approved in Diversified  
15 service area in decades. During negotiations regarding service to the subdivision, and as a  
16 condition of rendering service to Phase 1 of the Vista Ranch subdivision, Diversified reached an  
17 understanding with Russ Brandt, a developer of real estate within Diversified's certificated area  
18 and a member of the limited liability company developing the Vista Ranch subdivision, whereby  
19 an existing well and wellsite (sufficient in size to accommodate a storage tank) owned by Russ  
20 Brandt would be conveyed to Diversified. Russ Brandt's well is located about 400 feet from  
21 Diversified's water lines. All terms and conditions of the purchase are agreed upon.

22  
23 In order to finance these improvements and provide pumping capacity and storage  
24 capacity needed to provide reliable water service within its certificated area, Diversified filed an  
25 application with the Water Infrastructure Financing Authority ("WIFA"). WIFA's preliminary  
26 funding recommendation placed Diversified in the fundable range.

1                   Shortly after Diversified reluctantly became involved in the pending certification  
2 dispute between H2O, Inc. and Johnson Utilities, and filed its own competing application to  
3 certificate lands contiguous to its current certificated area to protect its long-term economic  
4 viability, Johnson Utilities contacted WIFA and surreptitiously, outside of any public comment  
5 forum, sought to thwart WIFA's authorization of a loan for Diversified by providing incomplete  
6 and false information to WIFA. WIFA initially informed Diversified that, based upon  
7 information provided by Johnson Utilities, Diversified's WIFA application would be suspended.  
8

9                   Unsuccessful in its attempt to thwart the WIFA financing of the well and wellsite,  
10 Johnson Utilities sought out the location of the wellsite committed to Diversified, as generally  
11 discussed in Diversified's WIFA application and in hearings before the Commission, and  
12 approached Russ Brandt, landowners and prospective developers within Diversified's certificated  
13 area, with the to (i) deprive Diversified of the well and wellsite previously committed by Russ  
14 Brandt, and (ii) convince landowners and prospective developers to oppose the conveyance of  
15 the well and wellsite to Diversified and to seek to have their lands decertified and/or to file  
16 complaints against Diversified. Johnson Utilities has intentionally fostered disenchantment  
17 between Diversified and Russ Brandt and said landowners/developers by expressing a  
18 willingness to provide both water and sewer service to their lands and to minimize the  
19 investment developers must make in the water system by way of advances in aide of  
20 construction. Johnson Utilities undertook and is undertaking these activities for the purpose of  
21 increasing the size of its certificated area and with knowledge that the well, wellsite and  
22 properties are located within Diversified's certificated area, that Diversified and Russ Brandt had  
23 negotiated a sales agreement for the well and wellsite and that the well and wellsite are located a  
24 mile within Diversified's certificated area and more than four miles from Johnson Utilities'  
25 current certificated area and even further from any existing facilities or services of Johnson  
26 Utilities.

1 Johnson Utilities has also offered to make water production from the well  
2 available to Russ Brandt or his designee at wholesale for the purpose of providing water service  
3 to approximately 960 acres within Diversified's certificated area. A copy of Johnson Utilities'  
4 proposed Service Agreement with Russ Brandt is attached as Exhibit B.

5 While seeking to acquire the well and wellsite (which Diversified has counted on  
6 since first discussing service to Rancho Vista subdivision), Johnson Utilities has applied  
7 pressure, both directly and indirectly on Russ Brandt not to convey the wellsite to Diversified.  
8

9 **C. Johnson Utilities Is Damaging Diversified And Threatening The**  
10 **Health, Safety And Welfare Of Diversified's Customers.**

11 The activities of Johnson Utilities are contrary to the express provisions of  
12 Arizona law and the concept of regulated monopoly and are directly responsible for threatening  
13 Diversified's immediate ability to improve its water system and to provide reliable water service  
14 to Diversified's existing customers. Further, Johnson Utilities' activities are threatening the  
15 long-term viability of Diversified by interfering with Diversified's ability to secure a new water  
16 production source and storage tank site, a well and storage tank needed regardless of the outcome  
17 of the contested certificated proceeding. If successful, Johnson Utilities' actions will increase the  
18 cost of service to Diversified's existing customers. These activities of Johnson Utilities must be  
19 stopped immediately to prevent further irreparable injury to Diversified and Diversified's  
20 customers.

21 **II. THE PUBLIC INTEREST AND WELFARE MANDATE THAT JOHNSON**  
22 **UTILITIES BE TEMPORARILY RESTRAINED.**

23 The public interest and welfare mandate that Johnson Utilities be temporarily  
24 restrained from (1) extending facilities into Diversified's certificated area including, without  
25 limitation, executing the Well Purchase Agreement and Service Agreement; (2) from interfering  
26 with Diversified's WIFA application; and (3) from contacting landowners or potential developers  
of land within Diversified's Certificate of Convenience and Necessity. An order temporarily

1 restraining Johnson Utilities from these actions is necessary to preserve the status quo pending a  
2 hearing on these serious threats to Diversified and to the public interest and welfare.

3 An order temporarily restraining Johnson Utilities is appropriate without written  
4 or oral notice to the adverse party or that party's attorney if it clearly appears from specific fact  
5 shown by affidavit that immediate and irreparable injury, loss or damage will result to  
6 Diversified before Johnson Utilities can be heard. See, Rule 65D, A.R.C.P. Johnson Utilities'  
7 acquisition of the well and wellsite committed to Diversified, its offer of water service within  
8 Diversified's certificated area by way of the Service Agreement and otherwise its continual  
9 interference with Diversified's WIFA application, and its continuing offerings of inducements to  
10 property owners and developers within Diversified's certificated area pending a hearing or  
11 Diversified's request for order preliminarily restraining these illegal activities and resolution of  
12 Diversified's First Amended Complaint will cause damage to Diversified, uncompensable after  
13 the fact including, without limitation, placing financing critical to Diversified at risk, loss of a  
14 well and wellsite, critical to Diversified's operations, infringement upon Diversified's  
15 certificated area and the alienation of landowners and developers within Diversified's certificated  
16 area. See, Affidavit in Support of Application for Order Without Notice to Preserve Status Quo,  
17 attached hereto as Exhibit D and incorporated herein by this reference.

18  
19 WHEREFORE, it is respectfully requested that the Commission enter its order, in  
20 the form attached hereto as Exhibit E, temporarily restraining Johnson Utilities, L.L.C., dba  
21 Johnson Utilities Company, its officers, directors, employees, agents, servants and any and all  
22 other persons in active concert or participation with them from:

23 1. Interfering with Diversified Water Utilities, Inc.'s application for  
24 financing with the Water Infrastructure Financing Authority ("WIFA");

25 2. Extending its facilities or service into the area encompassed by  
26 Diversified Water Utilities, Inc.'s Certificate of Convenience and Necessity, including without

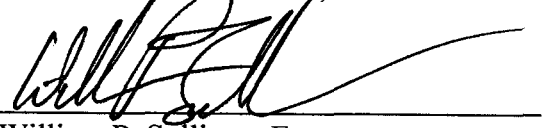


1 limitation (i) entering into a Well Purchase Agreement relating to a wellsite more fully described  
2 on Exhibit A, which wellsite is located within the certificated area of Diversified Water Utilities,  
3 Inc., is several miles away from the area currently certificated to or served by Johnson Utilities  
4 L.L.C. dba Johnson Utilities Company and had previously been committed to Diversified Water  
5 Utilities, Inc. and (ii) entering into a Service Agreement to provide, or otherwise providing water  
6 service to properties within Diversified Water Utilities, Inc.'s Certificate of Convenience and  
7 Necessity; and  
8

9 3. Contacting, speaking to, discussing and/or negotiating with  
10 landowners and/or prospective developers within Diversified Water Utilities, Inc.'s certificated  
11 area for the purpose of offering water service and/or encouraging said landowners or prospective  
12 landowners from seeking deletions from Diversified Water Utilities, Inc.'s certificated area, or  
13 otherwise filing complaints regarding Diversified Water Utilities, Inc.'s service.

14 Respectfully submitted this 1<sup>st</sup> day of December, 2000.

15 MARTINEZ & CURTIS, P.C.

16   
17

18 William P. Sullivan, Esq.  
19 2712 North Seventh Street  
20 Phoenix, Arizona 85006-1090  
21 Attorneys for Diversified Water Utilities, Inc.  
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**PROOF OF SERVICE AND  
CERTIFICATE OF MAILING**

I hereby certify that on this 1<sup>st</sup> day of December, 2000, I caused the foregoing document to be served on the Arizona Corporation Commission by hand-delivering the original and ten (10) copies of said document to:

Docket Control  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

With copies of the foregoing  
mailed/delivered this 1<sup>st</sup> day  
of December, 2000 to:

Karen E. Nally  
Assistant Chief Administrative Law Judge  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

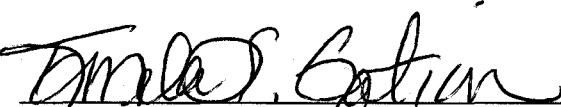
Lyn Farmer, Chief Counsel  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Deborah R. Scott  
Utilities Division Director  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Thomas H. Campbell  
Gregory Y. Harris  
Lewis & Roca  
40 N. Central Avenue  
Phoenix, Arizona 85004  
Attorneys for Johnson Utilities, L.L.C., dba  
Johnson Utilities Company

Richard L. Sallquist  
Sallquist & Drummond  
2525 E. Biltmore Circle, Suite 117  
Phoenix, Arizona 85016

Jay Shapiro  
Karen E. Errant  
Norman D. James  
Fennemore Craig  
3003 N. Central Ave., Suite 2600  
Phoenix, Arizona 85012-2913  
Attorneys for H2O, Inc.

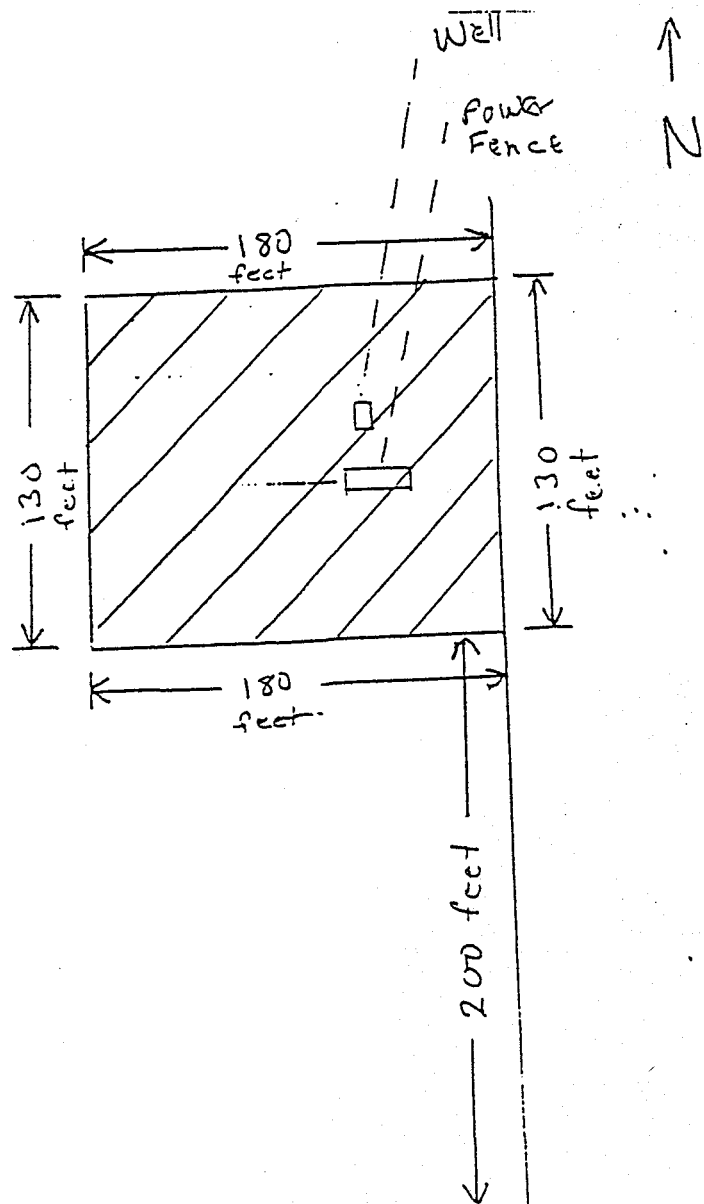


1620\3-1\pleadings\restrain order app.1127

# EXHIBIT A

PARCEL A

The cross-hatched portion of the East half of the Northeast quarter of the Northeast quarter of Section 34, Township 2 South, Range 8 East of the Gila and Salt River Base and Meridian, Pinal County, Arizona consisting of approximately .537 acres which includes an existing well, depicted (not to scale) as follows:



Southeast Corner of Section 34, T2S, R8E.

## **EXHIBIT B**

## SERVICE AGREEMENT

THIS AGREEMENT dated this \_\_\_\_ day of November, 2000, between Johnson Utilities Company LLC, dba Johnson Utilities Company (hereinafter "Johnson") and Russell E. Brandt, Rebecca Hope Brandt, and Mark A. and Pamela J. Szezepaniec, husband and wife, (hereinafter "Brandt") regarding provision of wholesale water service and certain wastewater services to the hereinafter described properties.

### RECITALS

WHEREAS, Brandt owns certain undeveloped real property which will ultimately be subdivided into residential developments (hereinafter the "Property") more fully described in Exhibit A hereto, and

WHEREAS, Johnson owns and operates a water and wastewater public service corporation in Pinal County, Arizona, and

WHEREAS, the Parties have entered into a Purchase Agreement, dated November 15, 2000, pursuant to which Johnson acquired Brandt's water well (the "Subject Well") for public utility purposes, and

WHEREAS, Brandt will need to provide a water source to the ultimate Utility Provider (as hereinafter described) to the Property capable of serving the Property, and

WHEREAS, the Brandt is of the opinion that it will be beneficial to the Property if other property in the vicinity of the Property as more fully described in Exhibit B hereto (hereinafter the "Other Property") had back-up water service from the Subject Well under wholesale service between Johnson and the Other Properties' water provider, and

WHEREAS, Johnson is willing to assist in that regard by providing wholesale water service and certain wastewater service to the Utility Provider for the Property and the water provider for the Other Property as contemplated in this Agreement.

NOW, THEREFORE, is mutually coveted and agreed by between the parties hereto as follows:

1. Johnson will develop the Subject Well and related equipment to provide domestic and fire flow service for Johnson's customers, plus any requirements for the approximate \_\_\_\_ acres herein described as the Property. The development and improvement of the Subject Well and related facilities, including a storage tank, shall be at Johnson's expense.

2. Brandt shall arrange for a Utility Provider to serve the Property, which Utility Provider may be a public service corporation, a cooperative, a homeowners association, an improvement district, or a municipality, as determined by Brandt.

3. Upon at least 90 days written notice to Johnson of Brandt's need for water service to the Property, or such other notice as agreed upon by the parties, Johnson shall enter into a wholesale water agreement with the Utility Provider for the Property. Such agreement shall be based upon Johnson's cost of service and shall include appropriate capital costs, operating expenses and a return on all investment, and if applicable, under such rates, charges, terms and conditions as approved by the Arizona Corporation Commission (the "ACC").

4. Johnson agrees to provide back-up wholesale water service to the water provider for the Other Property (comprising approximately 2,240 acres), if such provider is authorized to provide that service by the ACC. Back-up wholesale service would be provided only to augment the water provider's service to the Other Property, not as the primary source of supply for the water provider. Johnson will not offer backup service for the certificated area of the water provider outside of the Other Property. Johnson shall have no obligation to provide water to the Other Property from other than the Subject Well. The wholesale service will be provided based upon a facilities agreement, if necessary, under which the water provider would construct any required additional plant, and under wholesale rates of Johnson as authorized by the ACC.

5. The subject wholesale water service shall be provided subject to all applicable requirements, rules, and regulations of the Arizona Department of Environmental Quality ("ADEQ"), Arizona Department of Water Resources ("ADWR"), and Pinal County.

6. It is understood and agreed by the parties that in the event water or wastewater service is provided to customers on the Property by a Utility Provider other than Johnson, or on the Other Property by another water provider, then and in either of those events, Brandt, the actual Utility Provider, and/or the Other Property water provider shall be responsible for the all necessary water withdrawal authority, Assured Water Supply requirements, usage and conservation reports, and all other requirements as determined by ADWR, ADEQ, or the ACC.

7. Upon at least 90 days written notice, or such other time as agreed upon by the parties, Johnson shall enter into a wholesale wastewater treatment agreement with Utility Provider, or alternatively apply to the ACC for authority to provide wastewater service to the Property and shall provide that service pursuant to ACC approved rates, charges, terms and conditions, and subject to all ADEQ and Pinal County requirements, rules and regulations.

8. Brandt shall be responsible for the construction of all necessary water and/or wastewater transmission, distribution and/or collection main and facilities from the then-existing location of Johnson's facilities to the property line of the Property, or the agreed upon interconnection point with the Utility Provider (the "Off-Site Facilities"), which

facilities shall become the property of Johnson, provided, however, Johnson will construct a water transmission main not to exceed 500 feet in the length between the Subject Well and the Property. Brandt or the Other Property water provider, as appropriate, will fund any other Off-Site Facilities under a non-refundable agreement or ACC approved Tariffs.

9. All on-site facilities necessary to provide water or wastewater service to the Property will be funded directly by Brandt or under authorized charges of the Utility Provider.

10. Johnson shall provide maintenance and operation of the Off-Site Facilities necessary to provide service under this Agreement. Brandt or the Utility Provider shall provide maintenance and operation of the on-site facilities necessary to provide service under this Agreement.

11. The terms of this Agreement shall be construed in accordance with and governed by the laws of the State of Arizona.

12. In the event of litigation involving this Agreement, the unsuccessful party shall pay to the prevailing party all costs of suit, including reasonable attorneys fees. No party shall be entitled to preference in interpretation this Agreement. Each party has had the opportunity to have this Agreement reviewed by counsel and has either done so or waived the right to do so.

13. This Agreement contains the entire Agreement of the parties hereto with respect to the matters covered hereby and supersedes all prior arrangements and understanding between the parties, and no other agreement, statement or promise made by either party hereto which is not contained herein shall be binding or valid.

14. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their heirs, personal representatives, successors and assigns.

15. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be valid under applicable law, but if any provision shall be invalid or prohibited, such provision shall be ineffective only to the extent of such prohibition or invalidation, and shall not invalidate the remainder of such provision or the remaining provisions of this Agreement.

16. All notices, requests, demands and communications hereunder shall be deemed to have been duly given if delivered by hand or mailed, certified or registered mail with postage prepaid, return receipt requested, addressed as follows:



To: Johnson Utilities Company  
George H. Johnson  
5230 East Shea Boulevard, Suite 200  
Scottsdale, Arizona 85254

To: Russell E. Brandt  
\_\_\_\_\_  
\_\_\_\_\_

Any party from time to time may change such addressed by written notice by certified or registered mail to the other.

17. This Agreement shall become effective on the date of the closing on the Subject Well under the above referenced Purchase Agreement. In the event that purchase does not close, this Agreement shall be null and void.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

JOHNSON UTILITIES, L.L.C., an  
Arizona limited liability company

BRANDT

By: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
RUSSELL E. BRANDT

Its: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
REBECCA HOPE BRANDT

\_\_\_\_\_  
MARK A. SZEZEPANIEC

\_\_\_\_\_  
PAMELA J. SZEZEPANIEC

# EXHIBIT C

**AFFIDAVIT OF  
SCOTT GRAY**

STATE OF ARIZONA       )  
                                  ) ss.  
COUNTY OF MARICOPA   )

I, Scott Gray, upon first being duly sworn upon my oath do say:

1. I am over the age of 18 years, competent to give sworn testimony, and have first hand knowledge of all matters set forth in this Affidavit, except those matters asserted upon information and belief.

2. I am the President of Diversified Water Utilities, Inc., a public service corporation regulated by the Arizona Corporation Commission.

3. Diversified Water Utilities, Inc. holds a Certificate of Convenience and Necessity to service Sections, or portions of Sections 27, 24 and 35, T2S, R8E and Sections 2, 3, 4, 9, 10, 11 and 12, T3S, R8E, Pinal County, Arizona.

4. The initial Certificate of Convenience and Necessity was issued to Diversified Water Utilities, Inc.'s predecessor in by Decision No. 33633A, dated January 30, 1962, in what was then a very remote portion of Pinal County containing what is best characterized as highly speculative subdivisions sold primarily to non-residents located in the Northern States.


5. Upon Acquiring Quail Hollow's assets and certificate, Diversified Water Utilities, Inc. invested significant time and monies to upgrade the system and correct numerous violations of Arizona Department of Environmental Quality rules and regulations and satisfied a compliance order against the system. Diversified Water Utilities, Inc. also paid many years of Quail Hollow's unpaid property taxes.

6. Development of new services in the 1960's, 1970's, 1980's and early 1990's was extremely limited. However, over the last two years, development has increased significantly.

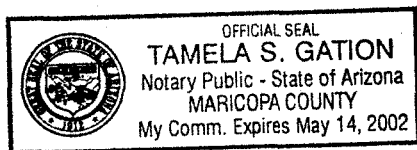
Water Utilities, Inc., (iii) placing Diversified Water Utilities, Inc.'s WIFA financing at risk, and (iv) alienating the property owners and prospective developers within Diversified Water Utilities, Inc.'s existing certificated area all of which are uncompensable after the fact.

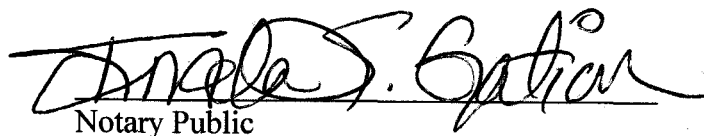
Further affiant sayeth naught.

Dated this 1<sup>st</sup> day of December, 2000.

  
\_\_\_\_\_  
Scott Gray

SUBSCRIBED AND SWORN TO before me this 1<sup>st</sup> day of December, 2000.



  
\_\_\_\_\_  
Notary Public

My commission expires:

5-14-2002  
1620\3-1\pleadings\gray.affidavit.1127

## EXHIBIT D

**BEFORE THE ARIZONA CORPORATION COMMISSION**

CARL J. KUNASEK  
CHAIRMAN

JIM IRVIN  
COMMISSIONER

WILLIAM A. MUNDELL  
COMMISSIONER

IN THE MATTER OF THE COMPLIANT )  
OF DIVERSIFIED WATER UTILITIES, )  
INC. AGAINST JOHNSON UTILITIES )  
COMPANY AND H2O, INC. FOR )  
POTENTIAL INTERFERENCE WITH THE )  
OPERATIONS OF AN EXISTING LINE, )  
PLANT OR SYSTEM. )

**DOCKET NOS. W-02234-A-00-0775  
WS-02987A-00-0775  
W-02859A-00-0775**

**AFFIDAVIT IN SUPPORT OF  
APPLICATION FOR ORDER  
WITHOUT NOTICE TO PRESERVE  
STATUS QUO**

STATE OF ARIZONA )  
 ) ss.  
COUNTY OF MARICOPA )

I, William P. Sullivan, being duly sworn, upon oath, deposes and says as follows:

1. I am the attorney for Diversified Water Utilities, Inc. and make this Affidavit in support of Diversified Water Utilities, Inc.'s Application for Order Without Notice to Preserve Status Quo. The statements made in this Affidavit are based upon my own personal knowledge.

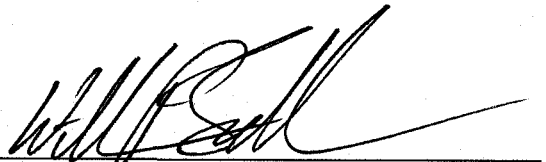
2. The Application for Order Without Notice to Preserve Status Quo should be granted without delay for the reason that the nature of the damage to Diversified Water Utilities, Inc. is such that the First Amended Complaint was not filed until it became readily apparent that Johnson Utilities, L.L.C., dba Johnson Utilities Company was actively working to interfere with Diversified Water Utilities, Inc.'s property rights, contractual relations and/or business expectancies in violation of Arizona law and is about to enter into an illegal well and wellsite agreement and service agreement and is continuing to interfere with the business

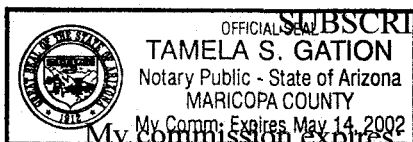
relations Diversified Water Utilities, Inc. has with landowners and prospective developers within its certificated area, including Russ Brandt. Due to the threatened course of action and the immediacy of harm to Diversified Water Utilities, Inc., Diversified Water Utilities, Inc. could not forebear filing the First Amended Complaint any longer.

3. Johnson Utilities, L.L.C., dba Johnson Utilities Company has not been served with the First Amended Complaint, but has been served with the original Complaint which did not contain the specificity of allegations of the First Amended Complaint. Johnson Utilities, L.L.C., dba Johnson Utilities Company is threatening to extend its facilities into the certificated area of Diversified Water Utilities, Inc. by acquiring the well and wellsite previously committed to Diversified Water Utilities, Inc. and to enter into a service agreement to provide water service within Diversified Water Utilities, Inc.'s certificated area. If notice of the Application for Order to maintain the status quo were provided, it is likely that Johnson Utilities, L.L.C., dba Johnson Utilities Company would attempt to formalize the agreements and otherwise press its interference with Diversified Water Utilities, Inc.'s property rights, contractual relations and/or business expectancies and therefore filing of the Application for Order to maintain the status quo needs to be filed without providing notice.

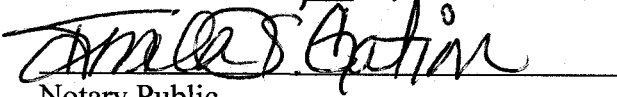
Further affiant sayeth naught.

Dated this 1st day of December, 2000.

  
William P. Sullivan



SUBSCRIBED AND SWORN TO before me this 1st day of December, 2000.

  
Notary Public

5-14-2002

1620\3-1\pleadings\affidavit to order.1130

**EXHIBIT E**



1  
2  
3 **BEFORE THE ARIZONA CORPORATION COMMISSION**

4 CARL J. KUNASEK

5 CHAIRMAN

6 JIM IRVIN

7 COMMISSIONER

8 WILLIAM A. MUNDELL

9 COMMISSIONER

10 IN THE MATTER OF THE COMPLIANT )  
11 OF DIVERSIFIED WATER UTILITIES, )  
12 INC. AGAINST JOHNSON UTILITIES )  
13 COMPANY AND H2O, INC. FOR )  
14 POTENTIAL INTERFERENCE WITH THE )  
15 OPERATIONS OF AN EXISTING LINE, )  
16 PLANT OR SYSTEM. )

**DOCKET NOS. W-02234-A-00-0775**

**WS-02987A-00-0775**

**W-02859A-00-0775**

**ORDER**

17 BY THE COMMISSION:

18 This matter having been presented to the Arizona Corporation Commission on  
19 Diversified Water Utilities, Inc.'s Application for an Order Without Notice To Preserve Status  
20 Quo, and the Arizona Corporation Commission having considered the allegations of the  
21 Application and the First Amended Complaint and Diversified Water Utilities, Inc.'s attorney  
22 having certified the efforts which have been made to give notice and the reasons supporting  
23 Diversified Water Utilities, Inc.'s claim that notice should not be required, and it appearing that  
24 immediate and irreparable injury, loss, and damage will result to Diversified Water Utilities, Inc.,  
25 to wit the alienation of property owners within Diversified Water Utilities, Inc.'s certificated  
26 area, the loss of a well and wellsite, infringement upon Diversified Water Utilities, Inc.'s  
certificated area by another public service corporation and the risk of financing that is critical to  
Diversified Water Utilities, Inc. all of which are uncompensable after the fact, before notice is  
given to Johnson Utilities L.L.C. dba Johnson Utilities Company or Johnson Utilities L.L.C. dba  
Johnson Utilities Company's attorney and a hearing can be held on Diversified Water Utilities,  
Inc.'s Motion for Temporary Restraining Order and before Johnson Utilities L.L.C. dba Johnson

1 Utilities Company or Johnson Utilities L.L.C. dba Johnson Utilities Company's attorney can be  
2 heard in opposition, and good cause appearing therefore;

3 IT IS THEREFORE ORDERED that Johnson Utilities L.L.C. dba Johnson  
4 Utilities Company, its officers, directors, employees, agents, servants and any and all other  
5 persons in active concert or participation with them be and hereby are immediately restrained,  
6 from:

7 1. Interfering with Diversified Water Utilities, Inc.'s application for  
8 financing with the Water Infrastructure Financing Authority ("WIFA");

9 2. Extending its facilities or service into the area encompassed by  
10 Diversified Water Utilities, Inc.'s Certificate of Convenience and Necessity including, without  
11 limitation (i) entering into a Well Purchase Agreement relating to a wellsite more fully described  
12 on Exhibit A, attached hereto and (ii) entering into a Service Agreement to provide, or otherwise  
13 providing water from the aforementioned wellsite to provide water service to properties within  
14 Diversified Water Utilities, Inc.'s Certificate of Convenience and Necessity;

15 3. Contacting, speaking to, discussing and/or negotiating with  
16 landowners and/or prospective developers within Diversified Water Utilities, Inc.'s certificated  
17 area for the purpose of offering water service and/or encouraging said landowners or prospective  
18 landowners from seeking deletions from Diversified Water Utilities, Inc.'s certificated area, or  
19 otherwise filing complaints regarding Diversified Water Utilities, Inc.'s service.  
20

21 IT IS FURTHER ORDERED that, unless further extended by Order of the  
22 Commission this Order shall remain in force and effect pending a hearing whereby Johnson  
23 Utilities, L.L.C., dba Johnson Utilities Company shall appear and show cause why the Order  
24 Preserving the Status Quo should not remain in effect pending a final determination of  
25 Diversified Water Utilities, Inc.'s First Amended Complaint.  
26

1                   IT IS FURTHER ORDERED that Johnson Utilities, L.L.C., dba Johnson Utilities  
2 Company shall appear and show cause why the Order Preserving the Status Quo should not  
3 remain in effect pending a final determination of Diversified Water Utilities, Inc.'s First  
4 Amended Complaint the \_\_\_\_\_ day of \_\_\_\_\_, 2000 at the offices of the  
5 Arizona Corporation Commission at 1200 West Washington, Phoenix, Arizona.

6                   Dated this \_\_\_\_ day of December, 2000.

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10 ADMINISTRATIVE LAW JUDGE  
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